



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 17

In re Application of
David Andrew D'Zmura
Application No. 09/849,582
Filed: May 5, 2001
For: Method Of Determining
Zodiac Signs

: DECISION ON PETITION

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This is a decision on the petition filed by facsimile transmission on February 19, 2003 by which petitioner requests withdrawal of the examiner's final requirement for restriction to a single invention in this application. No fee is required.

The petition is denied.

Petitioner alleges that the examiner's requirement is in error because the various inventions identified by the examiner as being independent inventions can all be used in petitioner's innovative form of astrology. In addition, petitioner notes that the examiner has already examined these claims in connection with the corresponding Patent Cooperation Treaty application.

With respect to the first allegation of error, petitioner is advised that the inventions found by the examiner are indeed independent inventions for the reasons set forth by the examiner. That these inventions can be used together does not mean, that as disclosed, that they must be used together. It would appear that each of the inventions could be used for its intended purpose without regard to the other inventions, and as such, the inventions are indeed independent. Assuming that each is patentable, each is capable of supporting its own patent, which means that each must be examined on its own.

As to the second ground of error, it is considered unduly burdensome for an examiner to be required to examine nine independent inventions in a single application. Petitioner is advised that the patentability standards differ as between Patent Cooperation Treaty practice and practice with respect to United States nonprovisional patent applications filed under 35 USC § 111. In addition, United States practice takes note of certain references as being "prior art" that are not considered to be "prior art" in Patent Cooperation Treaty practice. Further, the standards for supporting "separate patents" differ as between the two practices.

Petitioner has not demonstrated any error in the examiner's final restriction requirement. There is, therefore, no basis upon which to grant the petition.

The application is being returned to storage in the Technology Center 3700 Central Files pending a reply to the Office letter dated December 27, 2002. Petitioner is advised that under 37 CFR 1.181(f), the time set in that letter for filing a reply continues to run as set therein and is not stayed by the filing of the instant petition.

PETITION DENIED.

E. Rollins Cross, Director, Patent
Examining Groups 3710 and 3720

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